

**BEFORE THE TENNESSEE ETHICS COMMISSION**

In re:	)	No. 2008-06
	)	
FRESENIUS MEDICAL CARE,	)	
	)	
Respondent.	)	

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**AMENDED ORDER ASSESSING CIVIL PENALTIES**

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This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on June 24, 2008, at its regularly scheduled meeting upon Commission staff's presentation of documentation substantiating that Respondent failed timely to file a Semi-Annual Lobbying Expenditure Report ("Report") which each employer of a lobbyist is required to file pursuant to Tenn. Code Ann. § 3-6-303(a).

**AMENDED FINDINGS OF FACT**

Based on the entire record in this matter, the Commission finds as follows:

1.     Registration. Fresenius Medical Care was registered as an employer of a lobbyist for 2007.
2.     Semi-Annual Lobbying Expenditure Report.
  - A.     In October 2007, Commission staff notified Fresenius Medical Care by electronic mail that it was required to file a Semi-Annual Lobbying Expenditure Report for the period ending September 30, 2007, and that such Report was due to be filed by November 15, 2007.
  - B.     As of November 15, 2007, Fresenius Medical Care had not filed its Report for the period ending September 30, 2007.
  - C.     On December 5, 2007, Commission staff mailed Fresenius Medical Care a Notice of Failure to File Semi-Annual Lobbying Expenditure Report ("Notice") by first class mail.
  - D.     Fresenius Medical Care did not respond to said Notice and did not file its Report.
  - E.     Fresenius Medical Care did not timely file its Report for the period ending March 31, 2007.

F. Fresenius Medical Care is in possession of the Commission's manual for lobbyists and employers of lobbyists as required by Tenn. Code Ann. § 3-6-114(c), which contains the requirement of filing Reports.

G. Fresenius Medical Care had sufficient notice of the requirement of filing the Report for the period ending September 30, 2007, in advance of its due date of November 15, 2007.

3. Notice of violation.

A. On March 12, 2008, Commission staff sent Fresenius Medical Care, by certified mail, return receipt requested, a Notice that the Commission intended to consider assessment of civil penalties against Fresenius Medical Care at its April 22, 2008 meeting, because of its failure to file its Report by November 15, 2007 ("Show Cause Notice").

B. The Show Cause Notice set forth the allegations, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and Fresenius Medical Care's opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.

C. The Commission received a return receipt substantiating that Fresenius Medical Care received the Show Cause Notice on March 18, 2008.

4. Filing of Report. The Commission received Fresenius Medical Care's Semi-Annual Lobbying Expenditure Report on March 24, 2008.

5. Showing of Good Cause. Fresenius Medical Care responded in writing with an explanation for its failure to file its Report by November 15, 2007 in response to the Show Cause Notice. It stated that the December Notice was mistaken as the 2008 registration reminder. This matter was on the agenda at the Commission's regularly scheduled meetings on April 22, 2008, May 27, 2008 and June 24, 2008. Fresenius Medical Care, through its employees and/or representatives, appeared at the Commission meetings to explain its conduct was inadvertent.

### CONCLUSIONS OF LAW

1. Fresenius Medical Care had a duty under Tenn. Code Ann. § 3-6-303(a) to file a Report for the six (6) month period ending September 30, 2007. This Report was due to be filed no later than November 15, 2007.

2. Under Tenn. Code Ann. § 3-6-306(a)(iii), the Commission may administratively assess a civil penalty of not more than twenty-five dollars (\$25.00) per day up to a maximum of seven hundred fifty dollars (\$750.00) if an employer of a lobbyist fails, without good cause, to timely file its Report.

3. Fresenius Medical Care did not show good cause why it failed to file its Report by November 15, 2007.

4. Therefore, it is appropriate for the Commission to assess a civil penalty pursuant to Tenn. Code Ann. § 3-6-303(a). The Commission would be within its authority to assess the maximum penalty of seven hundred fifty (\$750.00) dollars.

5. Fresenius Medical Care did file its Report reasonably promptly after receiving the Show Cause Notice, but had filed late for the previous reporting cycle. Therefore, the Commission finds it appropriate to assess a civil penalty of four hundred seventy-five dollars (\$475.00).

6. This assessment cannot become final until after respondent has been afforded notice and an opportunity for a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its right to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

### **ORDER**

It is therefore ORDERED as follows:

1. A civil penalty in the amount of four hundred seventy-five dollars (\$475.00) is assessed against Fresenius Medical Care for failure to timely file a Semi-Annual Lobbying Expenditure Report.

2. The Executive Director shall enter this Order.

3. The Executive Director shall cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery.

4. Respondent shall have the right to seek reconsideration of this Order by filing with the Commission, within fourteen (14) days after the date of entry of this Order, a written Request for Reconsideration in the form set forth in the Commission's draft Rules on Administrative Sanctions.

5. Alternatively, Respondent shall have the right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days after the date of entry of this Order, a Petition for a contested case hearing in the form set forth in the Commission's draft Rules on Administrative Sanctions.

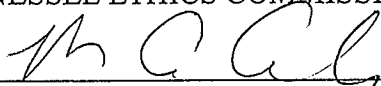
6. Along with this Order, the Executive Director shall provide Respondent a copy of the Commission's draft Rules on Administrative Sanctions.

7. If Respondent does not timely file a Request for Reconsideration or a Petition for

a contested case hearing, this Order shall become final and shall form the basis for legal action to collect the civil penalty.

SO ORDERED, this <sup>27<sup>th</sup></sup> day of ~~Aug~~ 2008

TENNESSEE ETHICS COMMISSION

By:   
Bruce A. Androphy, Executive Director